

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 96-30933

METAL SALES MANUFACTURING CORP, USA, for the
use and benefit of
Plaintiff - Counter-Defendant - Appellee

VERSUS

ACADIAN BUILDERS OF GONZALES INC
Defendant - Counter-Claimant - Cross-
Defendant - Appellant
AMERICAN BONDING COMPANY
Defendant - Cross-Claimant - Appellant.

Appeals from the United States District Court
for the Western District of Texas
(94-CV-614)

September 25, 1997

Before GIBSON¹, JOLLY and, EMILIO M. GARZA, Circuit Judges.

PER CURIAM:²

We have reviewed the briefs of the parties and the record on appeal and find that the magistrate judge did not clearly err in allocating damages stemming from the Fort Polk Project.

Acadian Builders seeks additional damages alleging that Metal

¹ Circuit Judge for the Eighth Circuit, sitting by designation.

² Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Sales' failure to timely deliver materials it was contractually obligated to deliver to the Fort Polk Project caused it damage far greater than that allotted by the magistrate judge. Acadian contends that the magistrate judge imposed too strenuous a burden upon Acadian Builders. See *Austin v. Parker*, 672 F.2d 508, 521 (5th Cir. 1982). We disagree. The magistrate judge merely made credibility choices on conflicting evidence. "Our reading of the Louisiana cases convinced us that [Acadian Builders could have] recover[ed] for [additional] amounts spent to complete the work in excess of the contract price so long as [it had] prove[d] them to the court's satisfaction." *Id.* at 522. It did not.

Accordingly, we AFFIRM.